

UNDERSTANDING CERTAIN LICENSING REQUIREMENTS OF THE DIVISION OF FINANCIAL INSTITUTIONS (“DFI”)

DFI administers and interprets **Chapter 412, Hawaii Revised Statutes** (“HRS”), which is Hawaii’s Code of Financial Institutions (hereafter “**the Code**”).

IMPORTANT: You are advised to consult an attorney regarding other Hawaii laws that may apply to your particular situation, including corporation, taxation, and other licensing laws. DFI cannot advise you on the applicability or interpretation of such other laws.

Most inquiries received by DFI relate to licensing as a “**nondepository financial services loan company**”, commonly called a finance company. The licensing requirements for this type of financial institution are in **Article 9** of the Code. (Other financial institutions regulated under the Code include banks, savings banks, savings and loan associations, trust companies, depository financial services loan companies, and credit unions.)

To determine whether a lender’s activities in this State require an Article 9 license, you should become familiar with the law on Interest and Usury in **Chapter 478, HRS** (hereafter “Chapter 478”). Chapter 478 sets maximum allowable interest rates or finance charges for various types of transactions, and provides certain exemptions from those limitations. **IMPORTANT: DFI neither administers nor interprets Chapter 478, so you should consult an attorney if you need help understanding that law.**

I. Factors Affecting Need for Licensing as a Nondepository FSLC

An Article 9 license as a nondepository financial services loan company is required if **both** of the following apply:

- (1) The lender has, or will have, a physical **or** legal presence in the State of Hawaii (e.g., *physical presence* is established if a lender opens an office or hires an employee in this State; *legal presence* is established if an out-of-state lender has obtained a certificate of authority to do business in this State); **and**
- (2) The lender intends to charge, on a “consumer credit” transaction (other than credit card agreement) or a “home business loan” that is not otherwise exempt from the application of Chapter 478, a rate of interest or finance charge that exceeds what is permitted by Chapter 478 for a lender not licensed or chartered under the Code. (The terms in quotation marks are defined in §478-1, HRS.)

To understand item (2), you should refer to §478-4, HRS - “Rates permissible by written contract” and §478-8, HRS - “Exemptions from usury”. In general, **unless an exemption from usury applies**, licensing by DFI **may** be required if a lender with legal or physical presence in this State intends to make loans with rates in excess of 12% per year or 1% per month. However, there are many exemptions from usury for certain types of loans or transactions listed in §478-8, HRS, including first mortgage loans. Therefore, you should review Chapter 478 in detail and consult an attorney if you need assistance in applying the law to your business situation. As stated above, DFI does not administer Chapter 478 and cannot interpret that law for you.

Nondepository financial services loan companies licensed under Article 9 of the Code can exceed the Chapter 478 rate ceilings of 12% per year or 1% per month. Those companies are subject, instead, to the limitations in Article 9, which basically permit a maximum simple interest rate of 24% per year or higher-yielding precomputed interest rates, as described in §§412:9-301 and 412:9-302, HRS.

II. Licensing May Be Required To Make Even One Loan With Rate Exceeding Chapter 478 Limitations

Unless an exemption from usury applies, a lender with physical or legal presence in this State, who intends to make any loan, even just one, with interest rate or finance charge that exceeds what is permissible under Chapter 478 for unlicensed lenders, must be licensed by DFI. (See, §412:9-101, HRS.)

III. Licensing May Be Required for Purchaser or Assignee of Loans Made Under Article 9 of the Code

Any person (natural person, entity, or organization of any type) **with a legal or physical presence in this State**, who is a purchaser or assignee of loans made under Article 9 by a nondepository or depository financial services loan company, must be licensed or chartered by DFI, unless that person is otherwise authorized to charge or receive interest at the same rate and terms as provided for in the loans. An exception is made for assignments made to collect delinquent payments. (See, §412:9-309, HRS.)

IV. Out-of-State Mortgage Lenders Engaging Only In Interstate Commerce May Not Need To Be Licensed by DFI

Licensing by DFI is **not** required if a mortgage lender does not establish a physical or legal presence in Hawaii, **and** conducts all of its Hawaii lending from offices outside the State of Hawaii, doing business by mail or by telecommunications directly with borrowers, or by using licensed Hawaii mortgage brokers.

A. Out-Of-State Mortgage Lenders May Benefit As “Foreign Lenders” Under Part II, Chapter 207, HRS

An out-of-state mortgage lender engaging only in interstate commerce may want to determine whether it is a **“foreign lender”** as defined in §207-11 in Part II, Chapter 207, HRS, a Hawaii law relating to mortgage loans. Under that law, a foreign lender is entitled to benefit from certain exemptions and immunities. Foreign lenders need not register with any state agency to benefit from the exemptions and immunities. **IMPORTANT: A mortgage lender needing help with determining whether it is a “foreign lender” under Part II, Chapter 207, should consult an attorney, since DFI does not administer that law and cannot provide legal advice of this nature.**

B. Mortgage Broker Licensing Is Not Required for “Foreign Lenders”

If a mortgage lender is a “foreign lender” as defined in §207-11, HRS, then the mortgage lender is exempt from mortgage broker licensing under the law on Mortgage Brokers and Solicitors, Chapter 454, HRS. That exemption, listed in §454-2, HRS, is self-executing. The **Professional and Vocational Licensing Division** of the Department of Commerce and Consumer Affairs administers Chapter 454, HRS, but does not register or confirm exemptions. **If you have additional questions on mortgage broker licensing, please contact:**

Licensing Branch
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
Post Office Box 3469
Honolulu, Hawaii 96801

Tel. (808) 586-3000

V. Minimum Requirements to Apply for Licensing as Nondepository FSLC

To be licensed as a nondepository financial service loan company, a company must meet certain requirements including having an office in this State, and minimum paid-in capital and surplus of \$500,000. (See, Part III, Article 3 of the Code.) A nondepository financial services loan company need not be incorporated in this State. (§412:9-101, HRS.)

Application requirements are set forth in §412:3-301, HRS. A non-refundable fee of \$5,000 must accompany the application. To request an application package, contact DFI’s Licensing Examination Manager at Tel. (808) 586-2820.

VI. How to Get Access to Hawaii Revised Statutes (“HRS”)

- ✓ **Printed booklets of Chapters 412 and 478, HRS**, can be purchased at the Cashier’s Office of the Department of Commerce and Consumer Affairs, for a nominal charge. To mail-order the booklets, use a “Law Booklet Order Form”. To have the Order Form mailed or faxed to you, call DFI at Tel. (808) 586-2820. For fax-on-demand service on Oahu, call 587-1234, first press “2”, next press “7” for DFI, press “1” for fax service, then press “2” for the Order Form, and enter your fax number when requested. To download the Order Form from the DFI Web site, go to **www.hawaii.gov/dcca/dfi**, click on “Forms and Publications” on the main menu, click on “Forms”, then click on “DFI Form M”.

- ✓ **For quick on-line access to unofficial HRS Chapters 412, 449, 478, 454**, and most HRS chapters applicable to the Department of Commerce and Consumer Affairs (DCCA), go to: **www.hawaii.gov/dcca/hrs**

(The HRS text provided on this DCCA Web site is *unofficial* because only the bound volumes issued by the Revisor of Statutes contain the official Hawaii Revised Statutes.)

- ✓ **For all of the HRS on-line**, go to: **www.capitol.hawaii.gov**

Select “Status & Documents”. Scroll down to the box for “Hawaii Revised Statutes” and use either the Search feature or the Browse feature.

- If you know the HRS Chapter number you want, click on the “Browse” button, then click on the volume number containing that chapter, and next click on the chapter number. For example:

For Chapter 412, click on “Vol08_Ch0401-0429”. Then click on “HRS0412_CFI”.

For Chapter 449, click on “Vol10_Ch0436-0471”. Then click on “HRS0449”.

For Chapter 478, click on “Vol11_Ch0476-0490”. Then click on “HRS0478”.

For Chapter 207, click on “Vol04_Ch0201-0257”. Then click on “HRS0207”.

You will then see a list of all section *numbers* in the Chapter, but no headings or titles. To see all the section *headings* in a chapter, click on the first item on the list. For example, click on HRS_0412-.htm to see the section headings of Chapter 412.

- WARNING: On-line updates of the HRS that were amended or repealed in a recent legislative session may be delayed for many months. FOR HELP WITH LEGISLATIVE DOCUMENTS ON-LINE: Call the Public Access Room of the Legislative Reference Bureau at Tel. (808) 587-0478, or send e-mail to **par@capitol.hawaii.gov**.

FOR MORE INFORMATION, Go to DFI’s Web site: www.hawaii.gov/dcca/dfi

THIS FACT SHEET AND CHAPTERS 412 AND 478, HRS, CAN BE MADE AVAILABLE FOR INDIVIDUALS WITH SPECIAL NEEDS IN BRAILLE, LARGE PRINT OR AUDIOTAPE. PLEASE SUBMIT YOUR REQUEST TO THE COMMISSIONER OF FINANCIAL INSTITUTIONS BY CALLING TEL. (808) 586-2820.